

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BARBARA PARIS,

Plaintiff,

v.

ETHICON, INC., JOHNSON &
JOHNSON,

Defendants.

CASE NO. 3:20-cv-06266-BHS

ORDER GRANTING REQUEST
FOR COUNSEL AND DENYING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT
WITHOUT PREJUDICE

This matter comes before the Court on the Court’s order to show cause, Dkt. 65, and Plaintiff Barbara Paris’s response requesting appointment of counsel, Dkt. 66.

This case originated in the MDL *In re Ethicon, Inc. Products Liability Litigation*, MDL No. 2327, located in the Southern District of West Virginia. Dkt. 1. Paris brings claims against Defendants arising out of her surgical implantation of Gynemesh PS—a prolene mesh implant—to treat her pelvic organ prolapse. *See id.* at 3; Dkt. 33-1, Plaintiff Fact Sheet (“PFS”), at 4. Dr. Leslie Struxness performed surgery on Paris to implant the Gynemesh PS device on May 5, 2004 in Vancouver, Washington. PFS at 4.

1 On March 7, 2019, Paris terminated her counsel. *See* Dkt. 32. Her counsel then
2 moved to withdraw after advising Paris of the discovery deadlines and recommending
3 that she retain new counsel immediately. Dkt. 33-1, Exhibit B. The MDL court granted
4 the motion to withdraw in December 2020 after receiving a statement from Paris that she
5 intended to proceed with her case. *See* Dkts. 38, 39.

6 This case was transferred to this Court in January 2021. Dkt. 47. Defendants
7 moved to rene their fully briefed summary judgment motion and their fully briefed
8 motion to dismiss for failure to appear at deposition consistent with the transfer letter.
9 Dkt. 58. Paris moved for an extension of time, asserting that she was having difficulties
10 retaining counsel. Dkt. 59. Defendants did not oppose a continuance, Dkt. 60, and the
11 Court granted Paris an extension of time and ordered her to file a status report by March
12 12, 2021 explaining whether she had retained counsel or if she intended to proceed pro
13 se, Dkt. 61. Paris did not file a status report, and the Court ordered her to show cause as
14 to why the Court should not rule on Defendants' pending motion, Dkt. 62. Paris again did
15 not comply with the Court's order.

16 The Court thus granted Defendants' motion to rene, Dkt. 64, and, upon review
17 of the MDL motions, denied their motion to dismiss pursuant to Rule 37 and granted their
18 motion for order to show cause, Dkt. 65. The Court ordered Paris to show cause why her
19 case should not be dismissed with prejudice for failure to prosecute. *Id.* Paris responded,
20 indicating that she has had difficulty retaining counsel and requesting an appointment of
21 counsel. Dkt. 66. She stated that she has had ongoing health issues because of her mesh
22 implant and has become permanently disabled. *Id.* Defendants replied and argued that the

1 Court should dismiss the case under Federal Rule of Civil Procedure 41(b) for failure to
2 prosecute. Dkt. 67.

3 The Court concludes that this case merits the appointment of counsel to represent
4 Paris. To decide whether exceptional circumstances exist that warrant the appointment of
5 counsel, the Court must evaluate both “the likelihood of success on the merits [and] the
6 ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the
7 legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)
8 (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). The Court finds that this
9 case involves complex issues that Paris lacks the ability to properly address pro se,
10 particularly in light of the complex medical subject matter. Furthermore, this case has
11 already been affected by Paris’s significant difficulty in prosecuting her claims while
12 suffering from the injuries and disabilities she alleges were caused by her mesh implant.
13 While it remains unclear if Paris will succeed in establishing all of her claims, a review of
14 the case file has shown that her likelihood of success is enough that it warrants the aid of
15 capable counsel.

16 Therefore, Paris’s request for counsel is **GRANTED**. The Clerk shall identify an
17 attorney or law firm from the Court’s Pro Bono Panel to represent Paris.

18 Furthermore, Defendants’ motion for summary judgment, Dkt. 33, is **DENIED**
19 **without prejudice**. Upon appointment of counsel, the parties shall meet and confer in
20 accordance with Federal Rule of Civil Procedure 26(f), and the Court will set a new case
21 schedule. Defendants may renew or renote their motion for summary judgment in
22 accordance with the new schedule.

